

IN RE: PETITION FOR ZONING VARIANCE
NO SPECIFIC LOCATION

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

Case No. 90-110-SPH

Nottingham Village, Inc.
Petitioner

AMENDED ORDER

WHEREAS, The Petitioner herein requested a Special Hearing to approve a building and materials supply center inclusive of offices, showrooms, storage and warehousing in an M-L zone, in accordance with Petitioner's Exhibits 1, 4, 5 and 6; and

WHEREAS, in an Order issued on January 5, 1990, the Petitioner was granted the relief requested, subject to certain restrictions; and

WHEREAS, a Motion for Reconsideration was filed on January 12, 1990 by the Petitioner for further clarification of the implication of Section 253.1.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) in reference to the relief granted in zoning case No. 90-110-SPH on January 5, 1990; and

WHEREAS, a public hearing concerning the Motion for Reconsideration was held on January 26, 1990 and further testimony, evidence and argument was presented by the Petitioner concerning the possible retail nature of this project; and

WHEREAS, the Zoning Commissioner had restricted the Petitioner and all future users of the non-office buildings to 40% net floor area for showrooms, sales offices and sales operations and other offices, pursuant to restriction No. 2 of the Order; and

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WHEREAS, the petitioner wishes to clarify the distinction between generally permitted uses on this site and the solely restricted retail areas, the Petitioner has suggested a more specific restriction which, clearly, addresses the retail issue (See Petitioner's Exhibit B); and

WHEREAS, the Office of Planning and Zoning by Deputy Director, Pat Keller, in a memorandum dated January 18, 1990 indicated the County's position that a more desirable and enforceable restriction No. 2 could be developed that would protect the essential philosophy of the M-L zone, and thereby maintain the integrity of this industrial zone from strictly retail incursions; and

WHEREAS, it is the Zoning Commissioner's desire and purpose to prevent illegal retail development of the M-L zone, but to permit the development of this unique wholesale display and distribution center. However, the industrial nature of the M-L zone must be protected and the M-L zone, clearly, is not intended, nor will it be permitted to become a retail shopping center zone. The purpose of this amendment is to enable the development of a building materials supply center, complete with showrooms and offices.

NOW, THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 30th day of January, 1990, that the Order dated January 5, 1990, be and is hereby amended so as to replace restriction No. 2 with a new restriction No. 2, as follows:

2. The users of the non-office buildings shall devote no more than twenty-five percent (25%) of their net floor area to the stocking for sale of loose inventory accessible for direct sale and distribution on premises to the general public. For purposes of this restriction the term "loose inventory" shall refer to products displayed by a user with the user's intention that the normal method of purchase would be for the

purchase: (i) to remove such products from their display area; (ii) carry them to a point of sale facility such as a sales counter or cash register area; and (iii) after completing the purchase, carry such products out of the users premises. Except as expressly described in this restriction, the Petitioner and the users of the non-office buildings may devote as much or as little of the net floor area to warehousing, storage, sales, showroom and office uses as they shall determine.

IT IS FURTHER ORDERED, that all other terms, conditions, and restrictions of the original Order of January 5, 1990, shall remain in full force and effect.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:mmn
cc: Peoples Counsel

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IN RE: PETITION FOR SPECIAL HEARING
NO SPECIFIC LOCATION

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

Case # 90-110-SPH

Nottingham Village, Inc.
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to approve a building and materials supply center inclusive of offices, showrooms, storage and warehousing in an M-L zone, as more particularly described on Petitioner's Exhibits 1, 4, 5 and 6.

The Petitioner, by Richard R. Jones, Vice President of Nottingham Village, Inc., appeared and testified and was represented by Richard A. Reid, Esquire. Appearing on behalf of the Petitioner was Donald Radcliffe, Professional Architect; Robert L. Hannon, Land Planner, and Gary Gill. There were no Protestants.

The Petition in this matter was filed as if no specific location was being proposed for this use, if it was approved. However, the Petitioner's Memorandum In Support of the Petition, clearly, states a specific location.

"The House Fitters Center (the 'Center') is proposed as a joint project developed by Nottingham Properties, Inc. ('Nottingham'), MacKenzie & Associates ('MacKenzie') and Impact Centers Limited ('Impact'). The building complex will consist of about 110,000 square feet and will be located on the south side of I-95 adjacent to the extension of Campbell Boulevard as shown on the attached area map and site location (Attachment #1 & 2). The site is located within the larger planned 'White Marsh Business Park'; it is about 18 acres and zoned M-L. The White Marsh Business Park totals in size in excess of 200 acres. The entire area is situated within the County's White Marsh Growth Area."

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"The selection of this site was made in conjunction with the County's effort to attract new development to its planned growth areas. Both MacKenzie and Nottingham have committed resources to service new industrial, commercial and residential development that is being attracted to the area. This project will be supportive of the County's continuing efforts to attract additional investment to the White Marsh Growth Area."

Although the Petitioner does not seek this approval for a specific property, the proposal is really for one single location, as shown on Petitioner's Exhibits 1, 2 and 5. The evidence presented supports this location for the use, as described. I, therefore, have no choice but to rule on this matter limited to the site specified by the evidence and testimony provided by the Petitioner, as shown on Petitioner's Exhibits Nos. 1, 2, 4 and 5. for the Campbell Boulevard site.

The Petitioner's project, known as "House Fitters Center", will consist of three (3) buildings each to be occupied by multiple tenants. Two of the three buildings will house individually owned businesses engaged in the storage and/or sale of building materials and supplies. These vendors will occupy warehouse space that accesses merchandise showrooms for wholesale and retail sales. The third building on the site will contain office space and "resale" exhibition facilities. All space in this building (to be known as the Pavilion) will be marketed to businesses engaged in the construction and/or real estate industries. The subject site will provide a centralized one-stop facility with multiple tenants providing contractors a variety of construction materials, supplies and services. A representative list of the proposed uses for this facility is indicated on Petitioner's Exhibit No. 6. Testimony indicated that the facility will include wholesale and retail sales with emphasis on the wholesale.

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The Petitioner's evidence tends to establish the following about the proposed site.

The building space within the Center will be utilized for showrooms displaying homebuilding fixtures, warehouse-storage and service-related offices. Homebuilders, contractors and prospective homeowners will visit the "Center" and select materials to be installed in newly constructed or renovated homes. Materials so selected will be shipped to the home site, billed to the builder and included in the price of the home. The east-north-east area of the Metropolitan Baltimore complex is intended to be the primary homebuilding area served by this project. According to the Regional Planning Council, Baltimore County issued 4,628 new housing permits in 1987 and 5,151 in 1988. Approximately 30% of these are located in the east-north-east side of the County. In Harford County, 2,706 permits were issued in 1987 and 2,990 in 1988. The Legg Mason Realty Group's Housing Market Profile reported that in both 1987 and 1988 four of the top ten subareas for new house sales in Metropolitan Baltimore were in the primary service area for this project. These top producing home building areas include Perry Hall/White Marsh, Edgewood/Jappa, BelAir/Fallston and Mountain Road. This extensive home building growth trend in and beyond the White Marsh Growth area is intended to be directly supported by the concentration of vendors and suppliers located within the House Fitters Center.

The testimony, clearly, establishes that this project is being built on Campbell Boulevard which is a new road. Section 253.1.C. of the B.C.Z.R. requires the auxiliary retail and service uses to be located on a Class I Commercial Motorway. Campbell Boulevard has not been classified as of the date of the hearing. By definition, this use cannot be permitted if Campbell Boulevard is not a Class I Commercial Motorway.

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Section 253.1 of the B.C.Z.R. permits an office building as a matter of right. Therefore, there is no need to review the proposed office building use any further. The review herein then switches to the other two buildings which are for storage, warehousing and manufacturing.

As to these non-office buildings, the Petitioner has listed proposed possible users; however, the Petitioner does not wish this list to be a limitation. See Petitioner's Exhibit No. 6. As to these uses, the Petitioner continues to argue:

"... that the products described in the building material categories are currently sold by vendors operating in the M-L zones throughout Baltimore County to builders, remodelers, contractors, developers, architects, designers, decorators, and other professionals involved in the selection of building materials and supplies for projects or the confirmation of the selection of building materials or supplies for projects (collectively the 'professional sector'). Similarly, Petitioner submits that these same products are currently sold to the general public by building material vendors operating in the M-L zones. In a business environment where building material vendors are accustomed to selling to both the professional sector and the general public from House Fitters, it is understandable that these vendors will not be interested in expanding their operations to House Fitters if they are unable to sell to both the professional sector and the general public from House Fitters. As such, general public from House Fitters is not a feasible project if the House Fitters is not a feasible project if the building material vendors can sell to the general public from existing M-L zoned facilities, but are not permitted to sell to the general public at House Fitters. House Fitters does not require special treatment to be feasible. It merely requires a level playing field."

The Petitioner argues the proposed users are consistent with the spirit and intent of the M-L zone and the I.M. district. This review must center on the auxiliary retail or service uses. The warehousing and storage issues as presented in the evidence and exhibits by the Petitioner is a misreading of the purpose and intent of the M-L zone of the B.C.Z.R. As

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Section 253.1.B.15 makes clear the storage, warehousing, or wholesale distribution of products is permitted. The issue then turns to the sales and showrooms, not the items stored.

I don't believe it is necessary to go through the review set forth in the Petitioner's Supplementary Memorandum. The issue is sales, and showrooms and these uses must be auxiliary and accessory to the principal permitted uses. The language of Section 253.1.C. is very clear.

The entire purpose of Zoning Policy BM-14 and A-3 is to prevent the M-L zone from becoming a business/retail zone. The Petitioner's plans for this site and the proposed uses are desirable and arguably acceptable under the spirit and intent of the M-L-I.M. zone, the uses must be consistent with the letter of the regulations concerning sales. As to the list of possible uses, some are not envisioned as M-L uses. Other uses may be proper and may be approved by the Zoning Commissioner at a later date.

Testimony indicated that the proposed facility is distinguishable from a generic "retail shopping center" and, therefore, not violative of the spirit and intent of Bill No. 100. The intent of Bill No. 100 was to avoid unfettered development of M-L zoned land for major retail shopping centers. The Petitioner's proposal simply consolidates the various construction vendors operating in M-L zones throughout Baltimore County at a central and location. Unlike Petitioner's proposal, the typical "shopping center" incorporates a variety of retail vendors with little, if any, continuity in services and merchandise offered.

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in the roads, streets or alleys therein, nor be inconsistent with the purposes of the property zoning classification, nor in any other way be inconsistent with

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the spirit and intent of the B.C.Z.R. After reviewing all of the testimony and evidence presented, it appears that the special hearing should be granted subject to certain restrictions.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 5th day of January 1990 that the Petition for Special Hearing to approve a building and materials supply center inclusive of offices, showrooms, storage and warehousing in an ML-IM zone, all in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restriction which are conditions precedent to the foregoing relief:

1. The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner and the users of the non-office buildings shall devote no more than forty (40%) percent of the net floor area to show rooms and/or sales offices or sales operations and/or other offices.
3. The Petitioner shall only rent, lease, sub-lease, sell or permit to occupy space, within this site, users who provide and store the following goods, services and/or materials. See Attached List No. 1. The Zoning Commissioner may amend this list of acceptable uses.
4. The relief requested is granted on the condition that Campbell Boulevard is classified as Class I Commercial Motorway before CCR approval may be granted for the site and also no

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building permits may be issued for this site until such time as Campbell Boulevard is classified as a Class I Commercial Motorway.

5. The location of this use shall be limited to the site shown on Petitioner's Exhibit 1, 2 and 5. The project is not limited to the floor plans on proposed size and/or shape of the buildings shown on Petitioner's Exhibits 1, 2 and 5. The Petitioner shall submit to the Zoning Commissioner the new plans for the buildings and improvements, for approval, prior to the issuance of any permits.

6. Petitioner shall prepare and submit a landscaping plan for approval by the Baltimore County Landscape Planner. A copy of the approved plan shall be submitted to the Zoning Commissioner's Office for inclusion in the case file.

J. Robert Haines
Zoning Commissioner for
Baltimore County

JRH:mmm
cc: Peoples Counsel
enclosure

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ATTACHED LIST NO. 1

Acoustical Materials
Aluminum Building Materials
Built-in Major Appliances
Asphalt Materials
Awnings & Canopies
Brick
Building Restoration and Preservation Materials
Cabinet Makers
Cabinetry
Ceiling Materials
Central Heating and Air Conditioning Systems
Ceramic Materials
Built-in Closets Systems
Concrete and Accessories
Concrete Blocks
Construction Aggregates
Countertops
Doors, Door Frames, Gates and Gate Operating Devices
Drapery and Curtains - Window Fixtures
Drywall Materials
Fencing
Fireplace Materials, Systems and Accessories
Greenhouses and Sunspaces
Gutters and Downspouts
Gypsum Materials
Hardware (Rough & Finish)
Hardwood Materials
Built-in Hot Tubs & Spas (No outside storage)
Kitchen and Bath Materials, Systems & Accessories
Insulation Materials
Lighting
Lumber
Marble Materials
Masonry Materials
Millwork
Ornamental Iron Work
Overhead Doors and Equipment
Playground Equipment (Built-in)
Plumbing Materials
Porch Enclosures
Resilient Flooring
Roof Trusses
Roofing Materials

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Saunas - (Built-in)
Septic Tank & Systems
Shower Doors & Tub Enclosures
Siding Materials
Skylights
Sediment & Erosion Control Materials
Sprinkler Systems
Stairs & Stair Trim
Stone Materials
Stoves - Wood & Coal
Stucco, Dryvit & Exterior Coating Materials
Swimming Pools
Trade Displays and Exhibitions
Tennis Court Construction & Enclosures
Water Filtration & Purification, Softening & Condition,
Equipment & Services
Windows, Window Shades & Blinds

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PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

90-110-SPH

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 206.1 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a building and materials supply center inclusive of offices, showrooms, storage and warehousing in a ML-IM zone as more particularly described in the attached Memorandum.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/we do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser (Type or Print Name) [Signature] Address City and State	Legal Owner(s): NOTTINGHAM VILLAGE, INC. (Type or Print Name) [Signature] Address City and State	100 W. Pennsylvania Ave. (301) 825-0545 Address Towson, Maryland 21204 City and State
Attest: [Signature] Address City and State	102 West Pennsylvania Avenue Address Towson, Maryland 21204 City and State	100 W. Pennsylvania Ave. (301) 825-0545 Address Towson, Maryland 21204 City and State

ORDERED by The Zoning Commissioner of Baltimore County, this 6th day of January 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commission of Baltimore County in Room 100, County Office Building in Towson, Baltimore County, on the 27th day of January 1990, at 9 o'clock.

J. Robert Haines
Zoning Commissioner of Baltimore County

(over)

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Petitioner's
EXHIBIT B
90-110SPH

Jan. 26, 1990

2. The users of the non-office buildings shall devote no more than twenty-five percent (25%) of their net floor area to the stocking for sale of loose inventory accessible for direct sale and distribution on premises to the general public. For purposes of this restriction the term "loose inventory" shall refer to products displayed by a user with the user's intention that the normal method of purchase would be for the purchaser: (i) to remove such products from their display area; (ii) carry them to a point of sale facility such as a sales counter or cash register area; and (iii), after completing the purchase, carry such products out of the users premises. Except as expressly described in this restriction, the Petitioner and the users of the non-office buildings may devote as much or as little of the net floor area to warehousing, storage, sales, showroom, and office uses as they shall determine.

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RAR/plm
05-02-89

MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL HEARING FOR A HOUSE FITTERS CENTER IN A ML-IM ZONE

INTRODUCTION

House Fitters Center (the "Center") is proposed as a joint project developed by Nottingham Properties, Inc. ("Nottingham"), MacKenzie and Associates, Inc. ("MacKenzie") and Impact Centers, Ltd. ("Impact"). The building complex will consist of about 110,000 square feet and will be located on the south side of I-95 adjacent to the extension of Campbell Boulevard. The site is located within the larger, planned White Marsh Business Park; it is about 18 acres and zoned ML-IM. The entire area is situated within the County's White Marsh Growth Area.

The Center is intended to operate as a facility that houses principal vendors which provide building materials, supplies, fixtures and services to the building industry. It contemplates a one-stop center with multiple tenants to provide homebuilders with a central location for material selection and distribution. A representative list of generic tenant types for the Center is attached hereto as Exhibit 1.

The selection of this site was made in conjunction with the County's effort to attract new development to its planned growth areas. Both MacKenzie and Nottingham have committed resources to service new industrial, commercial and residential development that is being attracted to the area. This project will be supportive of the County's continuing efforts to attract additional investment to the White Marsh Growth Area.

FACTS

Uses within the Center will include offices, showrooms, warehousing, and storage. The majority of sales from the center will be made by wholesale. Prospective homeowners will visit

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the center and select materials to be installed in their home. Materials so selected will be shipped to the home site and billed to the builder who will include them in the price of the home. Some retail sales will be made perforce to the ultimate consumer.

EXCERPTS FROM BCZR

The following excerpts are considered to be relevant to the argument set forth herein:

- § 253.1 - "Uses Permitted as of Right [ML zone]. . . ."
- A. The following industrial uses: . . .
33. Offices or Office Buildings . . .
- B. The following . . . storage . . . uses . . .
2. Buildings-materials storage or sales yard, general . . .
15. Storage, warehousing, or wholesale distribution of any product whose sale (retail or wholesale) or final processing or production is permitted as of right as a principal use in M.L. zones; public warehousing . . .
- C. The following auxiliary retail or service uses or semi-industrial uses, provided that any such use is located in a planned industrial park at least 25 acres in net area or in an I.M. district, in neither case with any direct access to an arterial street other than a Class I Commercial Motorway: . . .
7. Carpentry or cabinet-making shops . . .
9. Electrical-contractors' shops . . .
10. Electroplating shops . . .
12. Heating- or air-conditioning-contractors' shops . . .
15. Machinery-sale- or -repair establishments . . .
17. Painting shops . . .
18. Plumbing-contractors' shops . . .
20. Sheet-metal shops . . .
- E. Combinations of the uses listed above. . . .

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S 101 - Definitions * * * "Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language.

Building Materials Storage and Sales Yard: The use of any space, whether inside or outside a building used principally for the storage or sale of building materials or supplies."

ARGUMENT

1. **Offices.** Offices are permitted in ML zones as a matter of right, RCZR, § 253.1-33 permits "Offices or Office Buildings" in a ML zone. There is no distinction between the office uses permitted in a ML zone and those permitted in a business zone. For example, see § 230.6 which employs almost identical language to that found in the ML zone to permit "Offices and Office Buildings" in a BL zone. Accordingly, anything that can be done in an office in a BL zone can be done in an office in a ML zone. Thus, uses such as a landscapers' offices where customers can be shown layouts, designs and plans from which they will select and purchase would be authorized and permitted in the House Fitters Center.

3. **Wholesale Sales.** It is believed that all of the vendors described on Exhibit 1 are dealing in products whose final processing or production is permitted as of right as a principal use in a ML zone. If they are, the wholesale distribution of such products is a permitted use in a ML zone.

4. Retail Sales. Unlimited retail sales of certain products listed on Exhibit 1 are permitted from the Center because it is in an "I" district and will not have any direct access to an arterial street other than a Class One Commercial Motorway, ECZR, § 253.1.C. These products include carpentry or cabinet-making shops, electrical-contractors' shops, electroplating shops, heating or air-conditioning-contractors' shops, machinery-sales or repair establishments, painting shops, plumbing-contractors' shops, and sheet-metal shops. To the extent that products contained in Exhibit 1 do not fit within these categories, their sale by retail would be permitted as accessory uses to the Center. ECZR, § 253.1.F.1.

5. Combinations. Combinations of all of the uses described above are permitted in a ML zone by BCZR, § 253.1.E.

CONCLUSION

Respectfully submitted

Richard A. Reid, Esq.
Suite 600
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-1800

Attorney for Petitioners

SUPPLEMENTARY MEMORANDUM OF LAW
IN SUPPORT OF THE PETITION

Petitioner, Nottingham Village, Inc., and its partners in the House Fitters project, MacKenzie & Associates, Inc. and Impact Centers, Ltd. (herein collectively "Petitioner") by its attorneys, submits this Supplementary Memorandum of Law in Support of the Petition.

Statement of the Issue

Petitioner seeks to develop a building materials and supply facility on an 18 acre parcel (more or less) within the White Marsh Town Center, located at the intersection of Interstate 95 and proposed Campbell Boulevard extended (the "site"). As more specifically described in the attached Petition and the Memorandum thereon, the Petitioner (collectively the "petition"); (i) the Memorandum in Support of Petition for Special Hearing for a House Fitters Center in a ML-TH Zone (the "Memorandum") previously submitted in this matter; and (ii) the testimony of the Petitioner by oral testimony on behalf of, the Petitioner at the hearing before the Commissioner on September 27, 1989 (the "hearing"), the proposed facility ("House Fitters") will consist of the following: (3) multiple buildings, each of which is designed to be occupied by multiple tenants.

The tenants in two (2) of these buildings will be separate, individually-owned businesses engaged principally in the storage of and/or sale of building materials and /or supplies (the "building material vendors"). These buildings will have access to showrooms across the front elevation and loading docks, overhead doors and other conditions typical of storage and distribution facilities and will be located in the zone in the County Council across the rear elevation (the "showroom/storage buildings").

Petitioner submitted an Exhibit at the hearing which is captioned "Schedule of Proposed Uses" and consists of a list of categories of building materials or supplies (the "building material categories"). Petitioner submits that the products described in the building material categories are currently sold by vendors operating in the ML zones throughout Baltimore County to a wide range of professional contractors, architects, designers, decorators, and other professionals involved in the selection of building materials and supplies for projects or the confirmation of the selection of building materials or supplies for projects (collectively "professional selection projects"). Petitioner submits that these same products are currently sold to the general public by building material vendors operating in the ML zones. In a business environment where building material vendors are accustomed to selling to both the professional sector and the general public, it is understandable that the vendors will not be interested in expanding their operations to House Fitters if they are unable to sell to both the professional sector and the general public from House Fitters. As such, House Fitters is not a viable project if the building material products can be sold to the general public from existing ML zoned facilities, but are not permitted to sell to the general public at House Fitters. House Fitters does not require special treatment to be feasible; it merely requires a level playing field. Therefore, to facilitate the development of the House Fitters project, the Commission respectfully requests that the Commission issue an Order and Opinion finding that the sale to the professional sector or to the general public of products falling within each of the building material categories by building material vendors operating out of the ML zones is permitted and that House Fitters is permitted

The inquiries of the Commissioner at the hearing focused attention on the central issue of this Petition. The Commissioner described a facility operated by Schumacher and Seiler on Aylesbury Road in Timonium as consisting of the following uses: (1) a showroom open to contractors and... (2) a storage building for materials and equipment (41) non-accessible office, storage and distribution facilities. After so describing this facility and noting that it is located in the ML zone, the Commissioner asked Petitioner's witness whether the uses of space in the showroom/storage building at the Fitts Farm are similar to the uses of space at Schumacher & Seiler's facility in Timonium, Maryland. The answer to the Commissioner's inquiry is "yes". The existing uses found at Schumacher & Seiler's facility in Timonium are the same as the proposed uses of space by bulk material vendors in the showroom/storage buildings at House & Kitzka.

The primary issue raised in the Petition is to determine under which provision or provisions of the BCZR sales of building materials to both the professional sector and the general public are permitted in the ML zone. Secondary issues which are also discussed in (i) the Supplemental Memorandum include the following: (i) the scope of the expression "building materials or supplies" as it is used in the BCZR; and (ii) differences between House Fitters and retail home center operations and shopping centers.

Argument

1. Each of the proposed uses described on the Schedule of Proposed Uses is permitted as a matter of right in the ML zone pursuant to the provisions of Section 253.1B.2 of the BCZR.

The uses permitted as a matter of right in the ML zone are described, generally, in Section 253.1 of the BCZR. Section 253.1B.2 declares that the following use is permitted as a matter of right in the ML zone:

Building materials storage or sales yard, general

In 1987, the BCZR was amended by the adoption of Bill No. 149-87. Section 1 of Bill 149-87 added certain definitions to Section 101 of the BCZR, including the

The use of any space, whether inside or outside building used principally for the storage or sale of building materials or supplies.

There are two interpretation questions raised by the language of this definition- first, what is meant by the language that permits "any space" to be used for "storage or sale", and second, what is meant by the expression "building materials or supplies".

The answer to each of these questions will depend, in part, on whether the Commissioner interprets this statutory language liberally or strictly. Petitioner requests a construction. The rules of statutory construction provide, first and foremost, that "[i]n construing a statute, a court does not inquire what the legislature or draftsman meant, but what the statute means." Washington Sanitation Sanitary Commission v. Elgin, 53 Md. 22, 454 (1983). "The rule applied in construction of a statute that the real intention must prevail over the literal meaning of the words of the statute say is not the intention is adopted only when the words of the statute say something that the legislature could not possibly have meant and that it would not apply when the only basis for a construction other than a literal one are either the words of the statute or the intention of the legislature should not have said what it did say, or the legislature should not have been in possession of all of the facts." 20 M.L.R. Statutes sec. 85 (1962). See also, Tawes, 187 Md. 195 (1946). Thus, in construing the words "any space", "storage or sale", and "any other expressions" the literal construction further provided is to be sought. The literal construction further provided is that even if the language of a statute is ambiguous and the meaning of the law makers, uncertain, the subject matter of the statute will control, to some extent, in determining whether a strict or liberal interpretation should be adopted. Legislation enacted...for the purpose of protecting private rights should be liberally construed." 20 M.L.R. Statutes sec. 141 (1962). Of course, however, legislation is legislation which affects public rights. It is also noteworthy that the legislature has designed to correct an existing law...state "to introduce regulations conducive to the public good...generally to be liberally construed." 20 M.L.R. Statutes sec. 142 (1962). For all these reasons, petitioner submits that the correct language of Bill No. 149-87 by seeking the liberal meaning of the language and by giving the language

its broadest possible construction in the context in which it is used.

Any discussion of the methodology to be employed in construing language in the BCCR would be woefully incomplete without mention of the BCCR's statutory approach to construction of its language. Bill No. 143-87 mandates that "any word or term not defined in Section 101 of the BCCR shall have the ordinarily accepted definition to be set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged" ("websters"). As such, in the absence of a statutory definition in the BCCR of a word or words and phrases in the BCCR is a question governed by Webster's. In the event that questions remain after looking to Webster's for an answer, the petitioner submits that these questions should be resolved by liberally construing the language of the BCCR.

The first interpretation issue concerns the meaning of the language that permits a building material vendor to use "any space" for "storage or sales". Petitioner submits that this language permits a Sec. 253.1B-2 building material vendor to engage in wholesale and retail sales and to devote any portion of his premises to storage or sales uses to the extent that the entire operation could be a showroom or a storage facility or any combination of showroom, storage, or storage and retail use.

The word "sale" is defined in Webster's as "the act of selling; a contract transferring the absolute or general ownership of property from one person or corporate body to another for a price as a sum of money or any other consideration." A literal definition of "sale" includes inclusive of wholesale sales, retail sales and any other sub-category of sale. Similarly, it is inclusive of sales to individuals and corporations. If the real intention of the County Council had been to limit the scope of sales under Sec. 253.18-2 to wholesale sales only, they could have easily done so. Barring that alternative, "wholesale," in the text of Bill No. 149-87 (Nor can it be argued that the intent of the County Council could not possibly have intended that the retail sales of building materials when such legislative history of Bill No. 149-87 is that it was drafted, in part, to ratify certain sales used by home centers such as Sears

Similarly, a literal and broad interpretation of the language which permits a building material vendor to use "any space" for the "sale or storage" (emphasis supplied) of building materials or supplies is inconsistent with imposing

any limitations on how much space must be devoted to storage space or how much can be devoted to sales space.

It might be argued that this approach is inconsistent with Policies A3 and B14 (collectively the "Policies") which impose limitations on the amount of space that can be used for accessory use retail sales in the ML zone. Petitioner submits that these Policies have no application where a Sec. 253.1B.2 use is concerned. The Policies provide a mechanical approach to the recurring zoning enforcement problem of determining whether or not accessory use retail sales conducted from a warehousing use in the ML zone are "incidental" within the meaning of Section 253.1B.2 of the BCZR. The Policies are only applicable to these accessory uses. In fact Sec. 253.1B.1 is specifically referenced on the face of each of the Policies in the policy manual. Also, it is instructive that the letter "A" as used in Policy A3 stands for "accessory", as in accessory use. It is also clear that the Policies are not bulk regulations which are imposed on all ML uses. If the Policies were bulk regulations then they would apply to all ML uses. The bulk regulations affecting all ML uses would be in direct conflict with certain ML uses other than Sec. 253.1B.2 uses. For example, the ML zone permits any number of different auxiliary retail uses such as office supply stores. No one would suggest that the Policies apply to limit the amount of sales space in an office supply store to 15% of the building space.

On a related matter, the Commissioner expressed some concern at the hearing that the showroom/storage buildings at House Fitters, due to their occupancy by multiple tenants and the opportunity to utilize substantial space in some of the tenant premises for showrooms, arguably could be viewed by some as comprising a "shopping center" violative of the spirit of Bill No. 100. Notwithstanding the lack of any opposition to the House Fitters project on this or other scores at the hearing, Petitioner understands the need to distinguish House Fitters from Bill No. 100 "shopping centers" and to address these concerns. Petitioner's answers to these concerns are, as follows:

a. Bill No. 100, adopted in 1970, was a reaction to the incursion of major, retail shopping centers into the ML zones. The policy directive of Bill No. 100 was to protect the available inventory of ML land from further erosion at the hands of developers of major, retail shopping centers. The building material vendors in the showroom/storage buildings at House Fitters are already found throughout ML

zones of Baltimore County. Therefore, what House Fitters represents is a shift of current ML uses to a different ML location, not an erosion of ML inventory by commercial uses.

b. House Fitters is not a "shopping center" as that term was understood during the Bill No. 100 debate in 1970, nor as that term is defined in Webster's or understood in common parlance. The shopping center incursions into ML-zoned land, which resulted in the adoption of Bill No. 100, involved major, regional shopping centers and malls, populated solely by retail tenants. Coincidentally, Webster defines a "shopping center" as "a concentration of retail stores and service establishments...." House Fitters is a concentration of building material vendors who typically locate within the ML zone and who are engaged predominantly in wholesale transactions.

c. Even if, for the sake of argument, Petitioner conceded that House Fitters is violative of the spirit of Bill No. 100, Petitioner respectfully submits that the legal question posed remains the same (i.e. does Sec. 253.1B.2 permit the tenants proposed for House Fitters to operate sales and/or storage facilities in the ML zone?). If, in the matter of right under the letter of the law, then it is not any less a permitted use even if it is in conflict with the spirit or goals of Bill No. 100.

In permitting building material vendors pursuant to the provisions of Sec. 253.1B.2 to use "any space" for "sale or storage of building materials or supplies", Baltimore County has treated this type of vendor favorably by comparison to most general retailing or warehousemen engaged in accessory use retailing. Petitioner submits that this is not only good policy, consistent with, or similar to, the approach taken in numerous other Maryland subdivisions, but also consistent with the historic practice of building material vendors in Baltimore County of locating predominantly in ML zones.

The next issue is to determine whether the meaning of the expression "building materials or supplies" in Section 253.1B.2 of the BCZR encompasses each of the building material categories proposed as a sale or storage use at House Fitters.

The word "building" is defined in Section 101 of the BCZR as "all structures enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind."

building industry related should be treated as "building materials" because they will be sold in "combination" with the sale of so many prima facie categories of "building materials". A vendor of building industry related products operating from a House Fitter venue in combination with many clearly permitted Sec. 253.1B.2 uses is should be treated as *in pari materia* of these permitted Sec. 253.1B.2 uses.

Moreover, the Memorandum sets forth numerous specifically permitted uses in the ML zone (subject to certain restrictions relating to access to Class I Commercial Motorways), including, carpentry or cabinet-making shops, electrical-contractor shops, painting shops, and plumbing-contractors' shops which are relevant to the issue at hand. Any of the categories of product that are building industry related but, arguably, not "building materials or supplies", should be treated as substantially similar uses to the U. S. described in Section 253.1C. As substantially similar uses these uses should be treated as *in pari materia* of the uses described in Section 253.1C and set forth in the Memorandum.

3. Since all sales at House Fitters are wholesale sales within the meaning of the BCZR, even products described in building material categories that are not permitted uses in the ML zone under Sections 253.1B.2, 253.1C or 253.1B can also be sold or stored by the building material vendors at House Fitters.

As argued in the Memorandum, wholesale distribution of the products described in the building material categories is permitted as a matter of right in the ML zone. See the Memorandum and Section 253.1B.15. Petitioner asserts that all of the sales activity at House Fitters is wholesale sales activity within the meaning of the BCZR.

Petitioner does not question that one of the important indicia of wholesale versus retail sales in a Webster's-driven analysis focuses on the question of whether or not the purchaser is purchasing for resale or consumption by a business (an indication of a wholesale transaction) or for personal consumption. Nevertheless, it is clear that neither the County Council, nor the Office of Planning & Zoning, intended that the adoption of Bill 149-87 would result in a rigid distinction between wholesale and retail

The word "material", used as a noun, is the subject of numerous definitions in Webster's. However, Bill No. 149-87 directs that "the ordinarily accepted definition" be used in this analysis. Allowing two definitions in Webster's definitions in the context of this issue, "ordinarily accepted definitions".

1. the basic matter (as metal, wood, plastic, fiber) from which the whole or the greater part of something physical (as a machine, tool, building, fabric) is made; 2. the finished stuff of which something physical is made.

Similarly, of the numerous definitions of the word "supply", used as a noun, in Webster's (noting that the word "supplies" is not defined in Webster's), Petitioner submits that the "ordinarily accepted definition" is as follows:

[I]tems or a quantity (as provisions, clothing, arms, or raw material) available for use, exploitation, or development or especially set aside to be dispensed at need.

Synthesizing, "materials or supplies" means the "basic matter" or "stuff" of which either the whole or any part of something physical is made, including raw materials used in the process. Since the BCZR supplies a common sense definition of "building", the Webster's-driven meaning of the phrase "materials or supplies" coupled with the BCZR definition of "building" indicates that the expression "building materials or supplies" would include all of the "basic matter" or "stuff" or "raw materials" from which the whole or any part of a building is made. In short, all of the products that exist in the physical world that are either component parts of a building, or the stuff or raw materials from which any such component parts of a building are made are "building materials or supplies", within the meaning of Section 253.1B.2 of the BCZR.

All that remains in this analysis, then is to determine where, under Maryland law and for the purposes of interpreting the BCZR, the physical reality of a "building" stops and the physical reality of something other than a "building" starts. This is necessary because the definition of "building" in the BCZR does not attempt to distinguish between where a "building" stops and something else (e.g. a furnishing) begins.

Determining what components or objects are parts of a building and which are not ultimately is a question of

statutory construction. For the reasons stated above this analysis should be guided by the proposition that a liberal construction is warranted. For this reason, Petitioner argues that if the County Council had intended to include only the structural elements of buildings within the meaning of the phrase "building materials", then they could have easily done so by merely adding the adjective "structural" to the text of Bill 149-87. That they did not include a limiting adjective in the legislation is indicative of the fact that they had no intention to limit the scope of the expression "building materials or supplies" to the structural materials, only.

There is no shortage of law on the subject of what materials or supplies are incorporated in buildings. The phrase "building materials or supplies" has meaning within the building industry, and when terms in a statute are used relating to trade or commerce, in the absence of a legislative intention to the contrary, the terms are presumed to be used in their trade or commercial meaning. 20 M.L.E. Statutes sec. 73 (1962). The determination of which products are incorporated into buildings versus those which are not is familiar terrain within the construction industry.

In the construction industry a product is a building material or supply if it is the type of product for which a mechanic's lien can be sought. "The mechanic's lien statutes of the various jurisdictions are generally construed as granting a lien for all such materials as ordinarily enter into, or are used in, the construction of buildings or other structures. The materials must be such as may be reasonably needed for and used about such a building...." 53 Am. Jur. 2d Mechanics' Liens sec. 93 (1970). Under Maryland law, generally, the "right to a lien for materials furnished extends to all such materials as ordinarily enter into, or are used in, the construction, repair, or improvement of buildings... etc.", and which are within the express or implied terms of the contract between the owner and the contractor. 15 M.L.E. Mechanics' Liens sec. 15 (1961). This latter test focusing on the express or implied terms of a contract between owner and contractor suggests an even more practical test for whether a product is a building material or not, i.e. if the product is of a kind typically included within the scope of a building contract, then it is a "building material". See also, Dudley v. Hurst, 67 Md. 44 (1887); and 53 Am. Jur. 2d Mechanics' Liens sec. 109 (1970) for the proposition that fixtures are chattels that become part of the realty as products that become part of buildings, products which are

generally furnished by contractors, and products for which mechanic's liens are available, Petitioner submits that fixtures are also "building materials or supplies".

Petitioner submits that each of the building material categories described on the Schedule of Proposed Uses is a category of products which is commonly supplied by builders in performing work required in building contracts and which is within the scope of products protected by the mechanic's lien laws of the state of Maryland. As such, the products incorporated in the building material categories are "building materials or supplies", within the meaning of Sec. 253.1B.2 of the BCZR and can be sold or stored from any space in the ML zone as a matter of right.

2. If any uses proposed in the building material categories are determined by the Commissioner not to be permissible Section 253.1B.2 uses, these uses are, nevertheless, permitted under Sections 253.1C 253.1E.

Petitioner acknowledges that some of the proposed building material categories may not be accepted by the Commissioner as Sec. 253.1B.2 uses because the Commissioner may not agree with Petitioner that these categories of product are always sold as "building materials or supplies". In such event, Petitioner argues, for the reasons stated below, that under the provisions of Section 253.1E these categories of products should be viewed as permissible "building materials or supplies" when sold at House Fitters.

Petitioner respectfully submits that by any reasoning, the vast majority of the building material categories submitted on the Schedule of Proposed Uses are "building materials or supplies" within the meaning of Sec. 253.1B.2. As such, it can be assumed that the vast majority of the products available at House Fitters are to be sold or stored from uses that are permitted Sec. 253.1B.2 uses. Sale of products that are viewed by the Commissioner to be building industry related products but not prima facie "building materials" should be permitted under the provisions of Section 253.1E which states that "[c]ombination of the uses listed in section 253.1 are expressly permitted in the ML zone.... For example, if a category of product is building industry related but not in the judgment of the Commissioner, an automatically permitted category of 'building material' in all contexts in which such products are sold, then, in a facility such as House Fitters where the vast majority of all products are clearly "building materials" any questionable categories of products which are

sales focused only on the intentions of the purchaser to either resell the product or consume it.

That this intention did not exist should come as no surprise. A necessary byproduct of adopting the entirety of an unabridged dictionary is the discovery, afterwards, of anomalous and clearly unintended results. At such times, and at such times only, the statutory rules of construction require that the real intent of the County Council be followed instead of an unintended literal intent. Clark v. Tawes; 187 Md. 195 (1946).

Petitioner has acknowledged that a literal application of the meaning of the word "wholesale" from Webster's suggests that sales between a vendor and a consumer can never be viewed as in the nature of wholesale sales. Had this been the clear intent of the County Council, then there should be some evidence of a contemporaneous intent of the County Council to overrule through Bill 149-87 the so-called "Membership Club" line of zoning cases because the law made in the "Membership Club" cases is completely inconsistent with a Webster's-driven definition of the term "wholesale". There is no evidence that the County Council meant to overrule the "Membership Club" cases when it adopted Bill No. 149-87 which by extension incorporates a definition of "wholesale sales" completely inconsistent with the law in these cases. In fact, if anything is clear in this area of Baltimore County zoning law and policy it is the proposition that the County Council and the Office of Planning & Zoning understand the rules promulgated in the "Membership Club" cases to be alive and well in 1989, notwithstanding the adoption of Bill 149-87. Through this very date the County Council and the Office of Planning & Zoning continues its ongoing efforts to refine legislative solutions to the problems perceived by these bodies resulting from the "Membership Club" cases. If the County Council intended that one result of the incorporation of Webster's via Bill 149-87 was to determine that all sales in all contexts henceforth made to consumers would be "retail sales" then the adoption of Bill 149-87 would, today, be viewed as having expressly overruled the "Membership Club" cases by adopting rigid definitions of "wholesale" and "retail". In that kind of legal world, all of the current activities of the County Council and the Office of Planning & Zoning to address problems caused by the "Membership Club" cases and to restrain commercial behavior permitted under the aegis of those cases would be unnecessary. One must conclude from these current activities of the County Council and Office of Planning & Zoning that neither the County Council nor the Office of Planning & Zoning believe now or believed at the

time that Bill 149-87 was adopted that its adoption overruled the "Membership Club" cases, or that the use of simplistic dictionary definitions of "wholesale" and "retail" could make the making of policy in this difficult area of zoning and planning in Baltimore County.

The only significance of the "Membership Club" cases in the context of this Petition stems from the fact that the "Membership Club" cases recognize that where the primary purpose of a sales organization is wholesale distribution that all of that organization's sales can be termed "wholesale" under the BCZR, even those sales made to the general public. Petitioner understands that there are those within the policy making infrastructure of Baltimore County who feel compelled to revisit the issue of whether, in fact, the primary purpose of the prototypical membership club operating in Baltimore County is to sell products to businesses. Petitioner, of course, expresses no opinion on this issue. However, Petitioner suggests that in any event it is not the policy behind the "Membership Club" cases which is at fault it is the application of the facts to the policy. Stated otherwise, it is good policy to treat sales organizations whose primary mission is wholesale sales as wholesalers. By allowing these organizations to function from ML zones, untrammelled by Policy A3, product is delivered at better prices to the business community. By allowing some retail sales to occur, unruly zoning enforcement issues are avoided. The problem is simply one of determining which types of uses will, in fact, remain predominantly wholesale and which will run roughshod over policy in their haste to transform themselves into retail operations after securing the blessings of Baltimore County.

The question remains, however- how to distinguish wholesale from retail operations amongst those who would engage in some of each. Petitioner suggests that the solution lies in adopting criteria on a case by case basis that in the larger context of the particular industry concerned will more reliably distinguish true wholesalers from retailers. It is the choice of inappropriate criteria that results in unacceptable incursions of retail, not the adoption of good policy. For example, one of the criteria adopted in the "Membership Club" cases which, in retrospect, was arguably not a good choice was the criteria focusing on the type of building and the nature of trade fixturing or lack thereof. Undistinguished architecture and "warehouse-like" fixturing do not necessarily attract wholesale sales, or repulse retail sales.

Recognizing that if all of Petitioner's Schedule of Proposed Uses had already passed muster under either of Sections 253.1B.2, 253.1C or 253.1D, it is argued that the Petitioner, that the entirety of this Argument 3 would be irrelevant, Petitioner suggests that the appropriate criteria to be utilized in determining whether any of the Schedule of Proposed Uses are predominantly "wholesalers" in the building products industry who can be trusted to engage in some retail sales without concern for abuse of that trust, are:

a. Similarity to permitted building material vendors. At worst, all of the proposed uses at House Fitters must be viewed as coming close to meeting any defensible interpretation of what is meant by the language of Section 253.1B.2. "In part materials" similarity to uses that are permitted in the ML zone should give some comfort to those seeking to prevent members' club-like incursions into the ML zone that such is not the intention on the part of the Petitioner now or prospectively. The great majority of the products sold at membership clubs are not similar in kind to those sold at membership clubs. The products sold at membership clubs are normally sold to the general public in the ML zone, including, for example, all of the food products. On the other hand, at the very least, it can be agreed that any products which are proposed to be sold at House Fitters that do not fall within the Commissioner's House Fitters that do not fall within the Commissioner's interpretation of the meaning of "building materials or supplies", nevertheless, do not miss falling within that definition by much.

b. Location within a facility dominated by permitted building material uses. By choosing a location within a facility dominated by Section 253.1B.2 permitted building material vendors, a sales organization is saying more clearly and more predictably over a long period of time, that it intends to target the same kind of purchasers as the Section 253.1B.2 users are targeting. The Section 253.1B.2 users are allowed to operate from the ML zone because, as a matter of policy, it is agreed that the kind of purchasers and they are targeting are dominated by bulk purchasers and professional sector purchasers- in other words, wholesale purchasers. By choosing to affiliate with such users, a vendor who narrowly missed being classified as a Section 253.1B.2 user makes the strongest possible statement to those concerned with zoning enforcement that their true, long-range intent is to target wholesale purchasers. Adopting this criteria would mean that a grey area type of building products category might be a permitted category if distributed from a facility like House Fitters, rather than from a free-standing location or a facility of unrelated

users because the zoning authority would have better reason to believe that the use distributing the products from that greater area category intended to target the wholesale marketplace targeted by the Section 253.1B.2 users in the facility.

c. Sales that are to be consummated by a significant percentage of delivered product. A recognizable indicia of the overall "wholesaler" of any business operation is the preponderance of delivered product versus carry-out product.

d. Sales activity resulting in significant credit account invoicing. Again, this is the kind of indicia that readily distinguishes sales organizations that focus on retail from those which focus on wholesale.

Summarizing, Petitioner asserts that uses that sell products that fall within the penumbra of the definition of "building materials or supplies", that locate in facilities like House Fitters which will be dominated by expressly permitted ML uses targeting professional sector sales opportunities and uses that engage in significant credit account sales transactions resulting in a significant percentage of delivered product rather than cash and carry transactions, are "wholesalers". As "wholesalers" their participation in the House Fitters project should be welcomed and encouraged by Baltimore County because the criteria which makes them "wholesalers" are criteria from which Baltimore County can derive substantial confidence that these uses will continue to be wholesale uses in the future.

Coincidentally, application of these criteria also will distinguish the uses proposed at House Fitters from pure retailers seeking to locate in free-standing locations in the ML zone and from pure retailers engaged in the home center industry (e.g. Hechinger's, Channel, etc.).

Conclusion

Petitioner has submitted a Schedule of Proposed Uses comprised of different categories of building products. Petitioner seeks the Order of the Commissioner that each of these building product categories can be sold or stored at a House Fitters facility, or the like, located in an ML zone, to any kind of purchaser, without resulting in the invocation of Policies A3-BH14 for the following reasons:

a. Each building material category is a category of "building materials or supplies" as that phrase is used in

Sec. 253.1B.2, which Section of the ZCR expressly permits the use of any space for the sale or storage of such products within the ML zone.

b. Even if the Commissioner determines that some of the building material categories are not within the scope of Sec. 253.1B.2, then each of the categories not qualifying under Sec. 253.1B.2, is nevertheless, a permitted use under Sec. 253.1C.

c. Even if the Commissioner determines that some of the building material categories are not within the scope of either Sec. 253.1B.2 or Sec. 253.1C, then each of the categories not qualifying under either of those Sections, is nevertheless, a permitted use under Sec. 253.1D.

d. Even if the Commissioner determines that some of the building material categories are not within the scope of either Sec. 253.1B.2 or Sec. 253.1C, or Sec. 253.1D, then each of the categories not qualifying under any of those Sections, is nevertheless, a permitted use because it will be engaged in wholesale sales.

Respectfully submitted,

Patrick Gill, Esquire
Counsel to Impact Centers, Ltd.
2328 W. Joppa Road
Lutherville, Maryland 21093

hlf/zonememo

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4006d
RAR/plm
05-22-89

MEMORANDUM

IN SUPPORT OF PETITION FOR SPECIAL HEARING FOR A HOUSE FITTERS CENTER IN AN ML-IM ZONE

INTRODUCTION

The House Fitters Center (the "Center") is proposed as a joint project developed by Nottingham Properties, Inc. ("Nottingham"), Mackenzie & Associates ("Mackenzie"), and Impact Centers Limited ("Impact"). The building complex will consist of about 110,000 square feet and will be located on the south side of I-95 adjacent to the extension of Campbell Boulevard as shown on the attached area map and site location. The site is located within the larger planned "White Marsh Business Park" totals in acres and zoned ML-IM. The White Marsh Business Park totals in size in excess of 200 acres. The entire area is situated within the County's White Marsh Growth Area.

The Center is intended to operate as a facility that houses principal vendors which provide building materials, supplies, fixtures and services to the building industry. It contemplates a one-stop purchasing center with multiple tenants to provide home builders with a central location for material selection and distribution.

The selection of this site was made in conjunction with the County's effort to attract new development to its planned growth areas. Both Mackenzie and Nottingham have committed resources to service new industrial, commercial and residential development that is being attracted to the area. This project will be supportive of the County's continuing efforts to attract additional investment to the White Marsh Growth Area.

FACTS

1. Building space within the Center will be utilized for showrooms displaying homebuilding fixtures, warehouse storage and service-related offices. The majority of sales from the "Center" will be made by wholesale. Homebuilders, contractors, and prospective homeowners will visit the "Center" and select materials to be installed in newly constructed or renovated homes. Materials so selected will be shipped to the home site, billed to the builder and included in the price of the home. Other sales will be made perforce to the ultimate consumer.

NOT RECORDED

2. The east-northeast side of Metropolitan Baltimore is intended to be the primary homebuilding area served by this project. According to the Regional Planning Council, Baltimore County issued 4628 new housing permits in 1987 and 5151 in 1988. Approximately 40% of these are located in the east-northeast side of the County. In Harford County, 2706 permits were issued in 1987 and 2990 in 1988.
3. The Legg Mason Realty Group's Housing Market Profiles reported that in both 1987 and 1988 four of the top ten suburbs for new house sales in Metropolitan Baltimore were in the primary service area for this project. These top in the primary service area include Perry Hall/White Marsh, Edgewood/Joppa, Bel Air/Fallston and Mountain Road.
4. This extensive home building growth trend in and beyond the White Marsh Growth Area is intended to be directly supported by the concentration of vendors and suppliers located within the House Fitters Center.

EXCERPTS FROM THE BALTIMORE COUNTY ZONING REGULATIONS

The following excerpts are considered to be relevant to the petition:

- PP253.3 - Uses Permitted as of Right (ML zone)
- A. The following industrial uses:
33. Offices or Office Buildings
 - B. The following storage uses:
2. Buildings - materials storage or sales yard, general
15. Storage, warehousing, or wholesale sale distribution of any product whose sale (retail or wholesale) or final processing or production is permitted as of right as a principal use in M.L. zones; public warehousing
 - C. The following auxiliary retail or service uses or semi-industrial uses, provided that any such use is located in a planned industrial park at least 25 acres in net area or in an I.M. district; in neither case with any direct access to an arterial street other than a Class I Commercial Motorway:
7. Carpentry or cabinet-making shops
9. Electrical-contractors' shops
10. Electroplating shops
12. Heating or air-conditioning-contractors' shops
15. Machinery-sales or -repair establishments
17. Painting shops

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18. Plumbing-contractors' shops
 20. Sheet-metal shops
- E. Combinations of the uses listed above. . . .
- F. Accessory uses or structures, including but not limited to:
1. Incidental sales (wholesale or retail)
- \$ 101 - Definitions "Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language.
- Building Materials Storage and Sales Yard: The use of any space, whether inside or outside a building used principally for the storage or sale of building materials or supplies."

NOT RECORDED

-3-

CERTIFICATE OF PUBLICATION

August 31, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the NORTHEAST TIMES BOOSTER and the NORTHEAST TIMES REPORTER, weekly newspapers published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Aug 31, 1989.

THE JEFFERSONIAN
AND
NORTHEAST TIMES BOOSTER and the
NORTHEAST TIMES REPORTER

S. Zeke Orlov
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BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

NOT RECORDED

TO: A.F. (Pat) Keller, Deputy Director
Office of Planning and Zoning
Date: December 4, 1989

FROM: J. Robert Haines
Zoning Commissioner

SUBJECT: Nottingham Village, Inc.,
Case #90-110-SPH
Hearing date: 9/27/89

On December 1, 1989, I received a Memorandum of Law in Support of the Petition Respecting House Fitters Center. As you are aware, this is a substantive new use case in Baltimore County. I would appreciate your reviewing this Memorandum of Law and give me any comments that you might have. Please understand that I intend to issue an opinion in this matter very quickly, but because of the significance of this interpretation, I believe that the Office of Planning's comments are invaluable.

JRH:mmm
cc: P. David Fields, Director, Office of Planning and Zoning

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Richard A. Reed	102 W. Pk. Ave. 2104
Robert Haines	2328 W. Joppa Rd. 21013
David R. Jones	100 W. Perry Ave. 2104
Donald R. Katz	10400 STEVENSON RD
Cliff X. Smith	2328 W. Joppa Rd.
Harry Hill	

NOT RECORDED

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

November 17, 1989



Dennis F. Rasmussen
County Executive

Richard A. Reid, Esquire
102 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Case # 90-110-SPH
Petition for Special Hearing
Nottingham Village, Inc.
Petitioner

Dear Mr. Reid:

At the conclusion of the above hearing on September 27, 1989, it was agreed that the Petitioner would submit additional memorandum relative to the issues discussed during the hearing. As of the date of this letter, I have not received the memorandum and, therefore, have not issued an Order in this case.

Your prompt attention to this matter will be appreciated.

Very truly yours,
J. Robert Haines
Zoning Commissioner

JRH:mmm

cc: Mr. Robert Hannon
Mackenzie & Assoc.
2328 W. Joppa Road,
Lutherville, Maryland 21093

cc: Mr. Richard Jones, Vice President
Nottingham Properties, Inc.
100 W. Pennsylvania Avenue
Towson, Maryland 21204

MICROFILMED

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

December 4, 1989



Dennis F. Rasmussen
County Executive

Mr. Robert L. Hannon
Senior Vice President
Mackenzie and Associates
2328 West Joppa Road
Suite 200
Lutherville, Maryland 21093

RE: Nottingham Village, Inc.,
Respecting the House Fitters Center
Case #90-110-SPH

Dear Bob:

I would like to take this opportunity to thank you for submitting the Memorandum of Law regarding the above matter. In an effort to mitigate the time delays, in this matter, caused by the misunderstanding and the time necessary to produce a scholarly review of the relevant law, I will make every effort to have your opinion processed before the end of the year.

Thank you for your understanding and cooperation.

Very truly yours,
J. Robert Haines
Zoning Commissioner

JRH:mmm

cc: J. Patrick Gill, Esquire
Counsel to Impact Centers, Ltd.
2328 W. Joppa Road
Lutherville, Maryland 21093

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THROW THIS CARD AWAY

House Fitters, a showroom and distribution center for building products, covers the map from one convenient location.

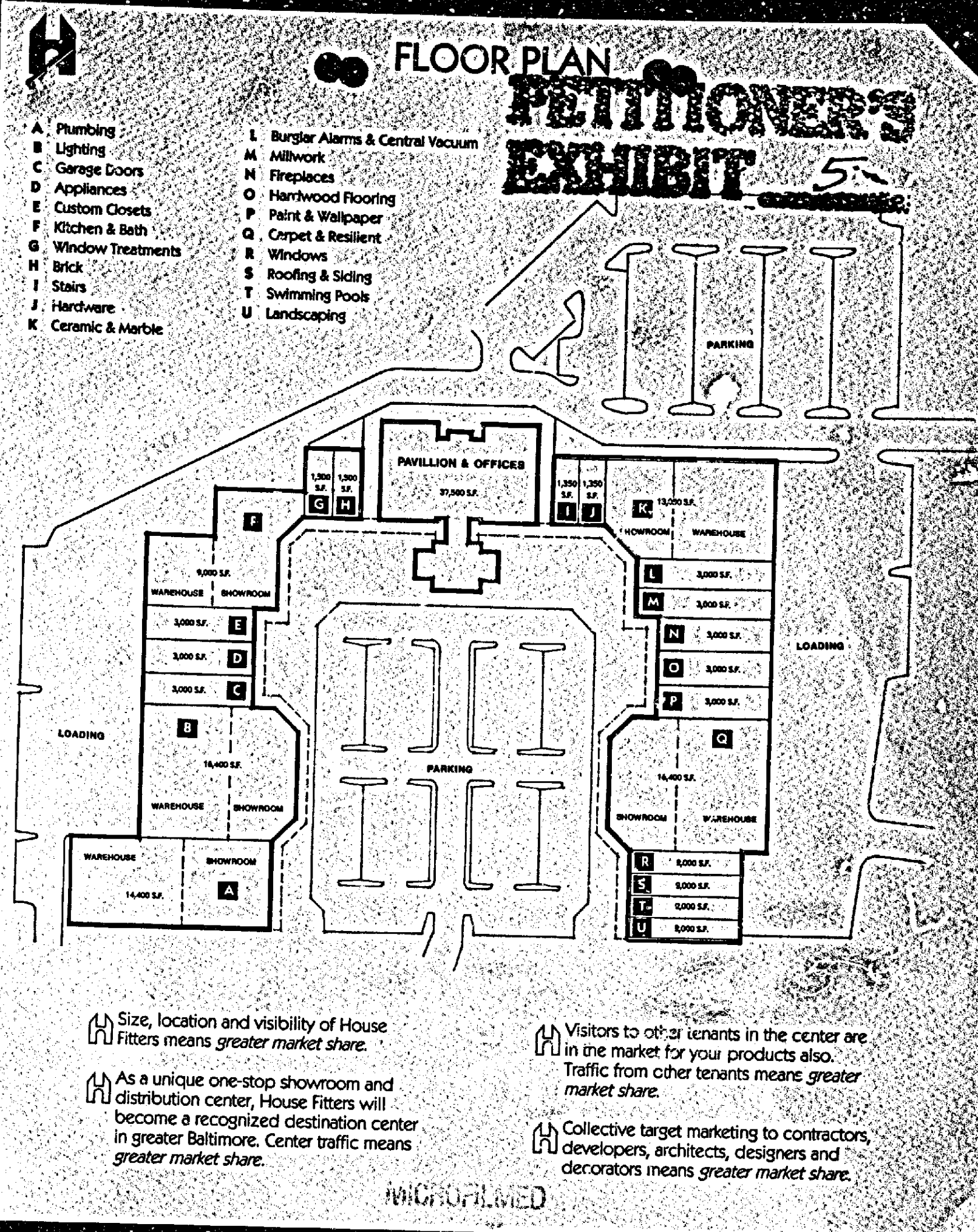


- A. Plumbing
- B. Lighting
- C. Garage Doors
- D. Appliances
- E. Custom Closets
- F. Kitchen & Bath
- G. Window Treatments
- H. Brick
- I. Stairs
- J. Hardware
- K. Ceramic & Marble
- L. Burglar Alarms & Central Vacuum
- M. Millwork
- N. Fireplaces
- O. Hardwood Flooring
- P. Paint & Wallpaper
- Q. Carpet & Resilient
- R. Windows
- S. Roofing & Siding
- T. Swimming Pools
- U. Landscaping

PETITIONER'S EXHIBIT 3

This map represents the actual locations of vendors used by one Baltimore-based builder. It speaks loudly of wasted time. But, it can't tell the whole story. The whole story would include chapters about repeat visits to many of the same vendors to coordinate colors, confirm layouts, pricing etc. In a sense, this map is the functional equivalent of the "Floor Plan" for House Fitters. It doesn't take much imagination to appreciate the time management advantages that House Fitters will offer to this builder and his customers. Now throw this card away and let's concentrate on the future.

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(H) Size, location and visibility of House Fitters means greater market share.

(H) As a unique one-stop showroom and distribution center, House Fitters will become a recognized destination center in greater Baltimore. Center traffic means greater market share.

(H) Visitors to other tenants in the center are in the market for your products also. Traffic from other tenants means greater market share.

(H) Collective target marketing to contractors, developers, architects, designers and decorators means greater market share.

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Robert L. Hannon
Senior Vice President

December 1, 1989

Mr. Robert Haines
Zoning Commissioner
Baltimore County
Towson, MD 21204

Dear Bob:

Herewith, please find a Supplementary Memorandum of Law in Support of the Petition Respecting the House Fitters Center.

This document was prepared by J. Patrick Gill, Counsel to Impact Centers Limited, who as you know is also a partner in this venture with Nottingham Properties and Mackenzie and Associates. Mr. Gill was formerly a real estate attorney with Weinberg and Green. This experience, plus his direct involvement with the House Fitters project establishes the basis for his submitting this document to supplement information and testimony already provided.

Different from your recollection, it was Mr. Gill who stated to you our intention to submit this supplementary information. If there is any question in this regard, please do not hesitate to call.

Nottingham Village, Inc., Mackenzie and Associates, Inc., and Impact Centers Limited all look forward to receiving your opinion on this matter.

Respectfully,

Robert L. Hannon
Senior Vice President

LMH/sid
Enclosure

REAL ESTATE DEVELOPMENT/LEASING & MANAGEMENT

2328 West Joppa Road
Suite 200
Lutherville, Maryland 21093
(301) 821-5327
FAX (301) 821-5327

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Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

January 16, 1990



Dennis F. Rasmussen
County Executive

Mr. Robert L. Hannon
Senior Vice President
Mackenzie and Associates
2328 W. Joppa Road-Suite 200
Lutherville, Maryland 21093

J. Patrick Gill, Esq. Ire
Counsel to Impact Centers, Ltd.
2328 W. Joppa Road
Lutherville, Maryland 21093

RE: Nottingham Village, Inc.
Case No. 90-110-SPH

Gentlemen:

Please be advised that I have accepted your Motion for Reconsideration regarding the above captioned case. I have scheduled an early hearing on that Motion for Friday, January 26, 1990 at 9:00 A.M. in Room 106, County Office Building.

Very truly yours,
J. Robert Haines
Zoning Commissioner

JRH:mmm

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January 12, 1990

HAND DELIVERY

Arnold F. Keller, III
Deputy Director
Baltimore County Office of
Planning and Zoning
Courts Building
401 Bosley Avenue
Room 406
Towson, Maryland 21204

Dear Pat:

In accordance with our discussions yesterday we propose that the following language be submitted to the Commissioner to take the place of the restriction #2 in the Commissioner's Order dated January 5, 1990:

2. The users of the non-office buildings shall devote no more than twenty-five percent (25%) of their net floor area to the stocking for sale of loose inventory accessible to the general public. For purposes of this restriction the term "loose inventory" shall refer to products displayed by a user with the user's intention that the normal method of purchase would be for the purchaser: (i) to remove such products from their display area; (ii) carry them to a point of sale facility such as a sales counter or cash register area; and (iii) after completing the purchase, carry such products out of the users premises. Except as expressly described in this restriction, the Petitioner and the users of the non-office buildings may devote as much or as little of the net floor area to warehousing, storage, sales, showroom, and office uses as they shall determine.

I trust that this draft comports with your ideas on this subject and addresses the concerns of the Office of Planning and Zoning that a 25% ceiling on retailing activities apply in the ML zone and that the House Fitters project does not contribute to any momentum for incursions

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of warehouse or home center retailers into the ML zone. This approach should also address the concerns of zoning enforcement that restrictions be subject to measurement.

I am also enclosing a copy of the Motion for Reconsideration which we are filing with the Commissioner today. In view of our mutual concerns that any revisions in the Order of the Commissioner be finalized at the earliest possible date, I would appreciate your comments on this language as soon as possible.

Very truly yours,
Robert L. Hannon
Robert L. Hannon

cc: Clark F. MacKenzie
P. Douglas Dollenberg
J. Patrick Gill

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cc: Richard R. Jones, Vice President
Nottingham Village, Inc.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: December 21, 1989
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: Nottingham Village, Inc. Supplementary

In response to the "Supplementary Memorandum of Law: for the petition of Nottingham Village, Inc., the following comments:

Argument 1:

- A. The section dealing with interpretation of "Building Materials Storage and Sales Yard" has to be taken in a holistic context of the M.L. zone. Breaking a sentence down into individual words subject to interpretation, such as "any space" or "sale" violates the integrity of the section and zone. References to Bill No. 149-87 that add the wording "use of any space, whether inside or outside," need to be juxtaposed against 1) Sec. 253.1.B. which is the major use category that sets the framework "The following transportation, storage, or quasi-public uses or utilities" for the following uses (no retail mentioned here); 2) zoning policies A3 and EM-14, which clearly denote the need to restrict retail, and which adds a retail component as a percent of the overall development. It appears that the petitioner would have us broadly define Sec. 253.3.B in a specific context of interpretation of the words "any" and "sales or storage" outside of the zone.
- B. It appears as if the petitioner is trying to encourage the proliferation of retail space within the overall project within the context of a wholesale establishment. The petitioner suggests that a percentage limit would be "in direct conflict... for example... with any number of different auxiliary retail uses." within the M.L. zone. Once again the term auxiliary applies to uses that are not principal, such as is allowed in the R-M District. If retail uses are not restricted within the M.L. zone the effective zoning might as well be B.L., B.M. or B.R.

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Nottingham Village Inc. Supplementary
Page 2

C. The issue of "shopping center" is not a concern to staff.
D. Section 253.1.B2 of the Baltimore County Zoning Regulations reads as follows:

"2. Building - Materials storage or sales yard, general."

Section 101 reads:

"Building Materials Storage and Sales Yard: The use of any space, whether inside or outside a building used principally for the storage or sale of building materials or supplies."

It appears that petitioner has confused the two at the bottom of page 7. The Petitioner has elaborated extensively on the meaning of building and material. The addition of the definition of Sec. 101 merely allows these sales and storage areas to be enclosed. As such, a need for a percentage of retail use becomes more important because the outdoor aspect of building materials storage is lost. The substitution of council's judgment by the petitioner is very inappropriate and should be proposed only on the basis of transcripts and testimony, otherwise, interpretation of wording is an administrative function.

E. The petitioner's in-depth reliance on sub-components of the term "building materials or supplies" could reduce all building elements, such as 2" x 4's or individual nails to a retail basis. Certainly, one could go to a Hechinger's or Stebbins' and buy enough building material to construct a house; however, the wholesale vs. retail line has been crossed.

Argument 2:

Section 253.1.C does allow auxiliary retail and service uses as part of the R-M district and Sec. 253.1.B allows combinations of those uses. The petitioners property is not zoned M.L.-I.M., so these alternatives are not available to the petitioner as stated in the memorandum.

Argument 3:

A. The petitioner discusses the differences between wholesale and retail and once again substitutes judgment of County Council and Office of Planning and Zoning. The distinction between wholesale and retail uses and their subsequent different land use impacts, and economic characteristics is quite clear. The references to Membership Clubs was a use

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Nottingham Village Inc. Supplementary
Page 3

that was evaluated in its own context and characteristics and one can only conclude that the operative factors of Membership Clubs are that these uses are, in fact, allowed in M.L. zones. The inclusion of this particular use is not indicative of relaxing the M.L. zone on the whole. We did not intend the Membership Club warehouses to set overall precedent for retail uses in the M.L. zone. Within each zone the different types of uses reflects a grouping of uses which range in impact but are grouped together within a general category.

B. The petitioner outlines several points of comparisons (a-b) that only serve to confuse the overall issue of intrusion of retail uses into a manufacturing zone.

Conclusion:

A broad interpretation of specific wording within the zoning ordinance that is taken out of context with the intent and purpose of the zone in which it is located in order to allow extensive retail would not be prudent. There are other mechanisms available (reasoning adding I.M. district, etc.) to allow the petitioner to proceed without eroding the integrity of the M.L. zone. Also, without a site plan outlining the details of uses and areas for uses it is impossible to determine the extent and impact of the project.

The M.L. zoning should stand as written and interpreted through the policies. Any provision of this will effectively hamper the integrity of the zone. A detailed site plan should be provided in order to appropriately locate and enumerate specific uses.

PK/JL/cmm

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BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: September 15, 1989
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: Nottingham Village, Inc. Item 541
Zoning Petition No. 90-110SPH

The petitioner is requesting a special hearing to allow a wholesale builders supply center in an M-L-IM zone. In reference to this request, staff provides the following information.

- A CRG will be required for this project.
- The Manufacturing Light zone allows a wide range of manufacturing, assembly, and product assembly and industrial service operations. In addition, office uses are allowed in this zone. The M-L-IM district allows a specified number of commercial (retail business) uses as "auxiliary" to a principle use.
- The petitioners parcel is located within the Perry Hall-White Marsh Plan area. The plan was adopted by County Council on February 4, 1985. The plan shows this area as suitable for Mixed Office/Light Industrial. Page 14, No. 6 states "support high quality office and commercial development adjacent to the Town Center to create a positive image of the Growth Area."
- In addition, the policies also state, 1) discourage linear strip development; 2) encourage pedestrian connections; 3) encourage a mix of employment opportunities; and 4) seek the highest standards of public environment design.
- The petitioner has not submitted a site plan as part of the application. A CRG will be required prior to the issuance of building permits.

SEP 19 1989

Nottingham Village, Inc.
Zoning Petition No. 90-110SPH
September 15, 1989
Page 2

Based upon the information provided and analysis conducted, staff recommends approval of the applicants. The proposal does conform to the goals, objectives and policies of the Master Plan regarding uses and employment opportunities. In many instances, the goals of the plan cannot be realized through existing zoning. Without a site plan, however, staff is unable to evaluate conformance with other objectives of the plan.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

PK/JL/11

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
County Building, Suite 406
Towson, Maryland 21204
(410) 887-3554

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 523, 560, 561, 562, 563, 564, 566, 567, 568, 570, 571, and 572.

July 26, 1989

RECEIVED
AUG 3 1989
ZONING OFF

Dennis F. Rasmussen
County Executive

Very truly yours,

Michael S. Flanigan
Traffic Engineer Associate II

MSF/lab

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Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2536
(410) 887-4500
Paul H. Reincke
Chief

JUNE 27, 1989

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Dennis F. Rasmussen
County Executive

RE: Property Owner: NOTTINGHAM VILLAGE, INC.

Location: NO SPECIFIC LOCATION

Item No.: 541 Zoning Agenda: JULY 5, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Capt. [Signature] Noted and Approved
Planning/Group Fire Prevention Bureau
Special Inspection Division

JK/kek

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BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: January 18, 1990
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
RE: HOUSE FITTERS
Zoning Petition No. 90 110SPH

Staff is in receipt of the letter dated January 12, 1990 from MacKenzie & Associates, Inc., regarding the Findings of Fact And Conclusion Of Law. The petitioner is requesting a Motion of Consideration regarding Condition No. 2 which limited the show room and/or sales offices and operations to no more than forty (40%) of the net floor area.

In response to this letter, staff provides the following information:

1. The ML zone was designed to provide a wide array of light manufacturing uses. The zone also allows office-use buildings. The IM district was added to this zone to allow auxiliary retail and services uses that would normally not be allowed in the zone. One of the most difficult problems that we have within the Zoning Office is maintaining the integrity of the industrial zones from retail incursion. To this end, two zoning policies were generated to assist staff and the development community in determining a proper mix of uses (A3, EM-14).
2. The intent of the House Fitters' philosophy is essentially in keeping with the ML-IM zone. The area will be used for offices, wholesale storage (in certain instances) and serves as the point of contact for future distribution from wholesale centers. As I understand the functioning of the facility, products will be available for display and selection by prospective homeowners or builders. Some items may be stockpiled on the premises for wholesale distribution to work sites.

Using traditional business practices, the following scenario generally takes place regarding the dissemination of goods:

- (i) A manufacturer produces a particular good or item.
- (ii) The manufacturer distributes goods to a wholesaler who works on a regional level.
- (iii) The wholesaler has a series of contacts or retailers who sell the good or item to the public."

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- (iv) The retailer receives a good or item from a wholesaler and sells to the consumer (general public);

There are, of course, an infinite variety of scenarios to this process, one of which could have retailers holding and distributing stockpiles such as is conducted in a wholesale operation.

3. The House Fitters Center is located in an M-L-IM zone. Section 253.1. Uses Permitted As Of Right, B. The following transportation, storage, or quasi-public uses or utilities: 3. Building-materials storage or sales yard, general; and Section 101 Contractor's Equipment Storage Yard, Baltimore County Zoning Regulations, provide the framework from which to judge the request. In addition, the County also has two zoning policies (A3, EM14) which were created to assist staff in the limiting of retail activities into manufacturing zones.

The feeling of staff is that the basic intent of the petitioner's request is not to further retail activity. On the other hand, the petitioner's request does not fit directly into intent of the M-L-IM zone. Because of the unique nature of such an activity which serves as a wholesale or point source outlet for the selection of building materials and not as a retail center, e.g. individuals, builders, etc., select items which are then delivered to job sites, the restrictions as proposed by the petitioner appear to be appropriate. I would suggest that Line 4 be amended to include "accessible for direct sale and distribution on premises to the general public."

PK
cc: Robert L. Hannon
MacKenzie & Associates, Inc.
2328 West Joppa Rd - 21204
PAX 821-5327
90110SPH/TXTGCL

RECEIVED
JAN 19 1990

ZONING OFFICE

MICROFILMED

